

July 2, 2001

M E M O R A N D U M

SPED 02-01

TO: Due Process Hearing Officers
Administrative Law Judges

FROM: William 'Bill' Elvey
Education Program Specialist

RE: Lay Advocates

It has come to the attention of the Arizona Department of Education/Exceptional Student Services Division that the issue of lay advocates representing parents/guardians of students with disabilities at due process hearings has arisen over the last several months. This letter is to remind all hearing officers that it is not permissible in Arizona for lay advocates to provide legal services in a special education due process hearing.

Supreme Court Rule 31 (a)(3) sets forth who is authorized to practice law in Arizona. The rule provides as follows:

3. *Privilege to practice.* Except as hereinafter provided in subsection 4 of this section (a), no person shall practice law in this state or hold himself out as one who may practice law in this state unless he is an active member of the state bar, and no member shall practice law in this state or hold himself out as one who may practice law in this state while suspended, disbarred, or on disability inactive status.

Subsection 4 of Rule 31 provides ten exceptions to Rule 31 (a)(3), none of which would authorize a lay advocate to represent a parent or guardian of a student with a disability in a special education due process hearing. If you, as the hearing officer, were to allow a lay advocate to act as a lawyer in a due process hearing, you would be in violation of Ethical Rule 5.5 of the Rules of the Supreme Court, Rules of Professional conduct, which provides in relevant part as follows:

A lawyer shall not:

- (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Therefore, you are advised to refuse to participate in a hearing where a lay advocate is representing a parent or guardian, or else you risk being in violation of the Ethical Rules.

If you have any questions, please address them to me at (602) 364-4025 and I will forward them to our legal counsel.